



Njenga v Kimuyu - Nairobi Area Church Council Chairman & 2 others (Employment and Labour Relations Cause E656 of 2022) [2023] KEELRC 1229 (KLR) (18 May 2023) (Ruling)

Neutral citation: [2023] KEELRC 1229 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E656 OF 2022**

L NDOLO, J

MAY 18, 2023

BETWEEN

DR SOLOMON NJENGA CLAIMANT

AND

**BISHOP JOSHUA NZAU KIMUYU - NAIROBI AREA CHURCH COUNCIL
CHAIRMAN 1ST RESPONDENT**

**REVEREND NICKSON MUTISYA WAMBUA - AFRICA INLAND CHURCH
EMBAKASI LOCAL COUNCIL 2ND RESPONDENT**

**JACKSON NDOLO- AFRICA INLAND CHURCH EMBAKASI DISTRICT
CHURCH COUNCIL 3RD RESPONDENT**

RULING

1. By a Memorandum of Claim dated May 30, 2022, the Claimant sued the Respondents for unlawful termination of employment.
2. Subsequent to this, the Respondents filed a notice of Preliminary Objection dated October 19, 2022. The Objection is based on the following grounds:
 - a. That the Court lacks the jurisdiction to hear and determine the claim by virtue of it being time barred pursuant to Section 90 of the *Employment Act*;
 - b. That the Claimant's employment was terminated on May 13, 2019 but he filed his claim on September 20, 2022, after the lapse of three (3) years from the date of termination;
 - c. That the Claimant's right to sue having lapsed, he lacks the capacity to bring any cause of action against the Respondents and his claim as constituted, ought to be struck out with costs.



3. The Respondent filed written submissions in support of the Preliminary Objection. The Claimant chose not to respond.
4. Section 90 of the *Employment Act* provides as follows:
 90. Notwithstanding the provisions of section 4(1) of the *Limitation of Actions Act*, no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof.
5. In his own Memorandum of Claim, the Claimant pleads that his employment was terminated on May 13, 2019 and this is when his cause of action arose.
6. The law is now firmly grounded on the issue of limitation of time in claims arising from an employment contract and it is that the courts have no jurisdiction to extend time (see the Court of Appeal in *Beatrice Kabai Adagala v Postal Corporation of Kenya [2015] eKLR*).
7. That said, the only finding to make is that the Claimant's claim was filed out of time and the Court has no jurisdiction to entertain it.
8. In the result, I uphold the Preliminary Objection raised by the Respondents and proceed to strike out the Claimant's claim with no order for costs.
9. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 18th DAY OF MAY 2023

LINNET NDOLO

JUDGE

Appearance:

No appearance for the Claimant

Mr. Chebiego for the Respondents

